

HOUSE BILL NO. 923

INTRODUCED BY D. HARVEY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WORKERS' COMPENSATION BENEFITS; REVISING LAWS TO PROVIDE THAT BENEFITS ARE BASED ON THE WORKER'S WAGES AT THE TIME OF THE INJURY; REVISING LAWS RELATING TO DEPARTMENT FEES; AND AMENDING SECTIONS 39-71-205, 39-71-701, 39-71-702, 39-71-703, AND 39-71-721, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-205, MCA, is amended to read:

"39-71-205. Department authorized to charge certain fees -- disposition of. (1) The department shall have power and authority to charge and collect a fee that is at least \$1 for copies of papers and records, including certified copies of documents and orders filed in its office, sufficient to recover the cost of the material and the time expended, as fixed by the department.

(2) The department shall have power and authority to fix and collect reasonable charges for publications issued under its authority.

(3) The fees charged and collected under this section ~~shall~~must be paid monthly into the treasury of the state to the credit of the state special revenue fund and ~~shall~~must be accompanied by a detailed statement thereof."

Section 2. Section 39-71-701, MCA, is amended to read:

"39-71-701. Compensation for temporary total disability -- exception. (1) Subject to the limitation in 39-71-736 and subsection (4) of this section, a worker is eligible for temporary total disability benefits:

(a) when the worker suffers a total loss of wages as a result of an injury and until the worker reaches maximum healing; or

(b) until the worker has been released to return to the employment in which the worker was engaged at the time of the injury or to employment with similar physical requirements.

1 (2) The determination of temporary total disability must be supported by a preponderance of
2 objective medical findings.

3 (3) Weekly compensation benefits for injury producing temporary total disability are 66 2/3% of the
4 wages received at the time of the injury. ~~The maximum weekly compensation benefits may not exceed the~~
5 ~~state's average weekly wage at the time of injury.~~ Temporary total disability benefits must be paid for the
6 duration of the worker's temporary disability. The weekly benefit amount may not be adjusted for cost of living
7 as provided in 39-71-702(5).

8 (4) If the treating physician releases a worker to return to the same, a modified, or an alternative
9 position that the individual is able and qualified to perform with the same employer at an equivalent or higher
10 wage than the individual received at the time of injury, the worker is no longer eligible for temporary total
11 disability benefits even though the worker has not reached maximum healing. A worker requalifies for
12 temporary total disability benefits if the modified or alternative position is no longer available to the worker for
13 any reason except for the worker's incarceration as provided for in 39-71-744, resignation, or termination for
14 disciplinary reasons caused by a violation of the employer's policies that provide for termination of employment
15 and if the worker continues to be temporarily totally disabled, as defined in 39-71-116.

16 (5) In cases in which it is determined that periodic disability benefits granted by the Social Security
17 Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not
18 below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for the week,
19 which amount is to be calculated from the date of the disability social security entitlement.

20 (6) If the claimant is awarded social security benefits, the insurer may, upon notification of the
21 claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to
22 recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from
23 agreeing to a repayment plan.

24 (7) A worker may not receive both wages and temporary total disability benefits without the written
25 consent of the insurer. A worker who receives both wages and temporary total disability benefits without written
26 consent of the insurer is guilty of theft and may be prosecuted under 45-6-301."
27

28 **Section 3.** Section 39-71-702, MCA, is amended to read:

1 **"39-71-702. Compensation for permanent total disability.** (1) If a worker is no longer temporarily
 2 totally disabled and is permanently totally disabled, as defined in 39-71-116, the worker is eligible for
 3 permanent total disability benefits. Permanent total disability benefits must be paid for the duration of the
 4 worker's permanent total disability, subject to 39-71-710.

5 (2) The determination of permanent total disability must be supported by a preponderance of
 6 objective medical findings.

7 (3) Weekly compensation benefits for an injury resulting in permanent total disability are 66 2/3%
 8 of the wages received at the time of the injury. ~~The maximum weekly compensation benefits may not exceed~~
 9 ~~the state's average weekly wage at the time of injury.~~

10 (4) In cases in which it is determined that periodic disability benefits granted by the Social Security
 11 Act are payable because of the injury, the weekly benefits payable under this section are reduced, but not
 12 below zero, by an amount equal, as nearly as practical, to one-half the federal periodic benefits for the week,
 13 which amount is to be calculated from the date of the disability social security entitlement.

14 (5) A worker's benefit amount must be adjusted for a cost-of-living increase on the next July 1 after
 15 104 weeks of permanent total disability benefits have been paid and on each succeeding July 1. The
 16 adjustment must be the percentage increase, if any, in the state's average weekly wage as adopted by the
 17 department over the state's average weekly wage adopted for the previous year.

18 (6) A worker may not receive both wages and permanent total disability benefits without the written
 19 consent of the insurer. A worker who receives both wages and permanent total disability benefits without written
 20 consent of the insurer is guilty of theft and may be prosecuted under 45-6-301.

21 (7) If the claimant is awarded social security benefits, the insurer may, upon notification of the
 22 claimant's receipt of social security benefits, suspend biweekly compensation benefits for a period sufficient to
 23 recover any resulting overpayment of benefits. This subsection does not prevent a claimant and insurer from
 24 agreeing to a repayment plan."
 25

26 **Section 4.** Section 39-71-703, MCA, is amended to read:

27 **"39-71-703. Compensation for permanent partial disability.** (1) If an injured worker suffers a
 28 permanent partial disability and is no longer entitled to temporary total or permanent total disability benefits, the

1 worker is entitled to a permanent partial disability award if that worker:

2 (a) has an actual wage loss as a result of the injury; and

3 (b) has a permanent impairment rating as determined by the sixth edition of the American medical
4 association Guides to the Evaluation of Permanent Impairment for the ratable condition. The ratable condition
5 must be a direct result of the compensable injury or occupational disease that:

6 (i) is not based exclusively on complaints of pain;

7 (ii) is established by objective medical findings; and

8 (iii) is more than zero.

9 (2) When a worker receives a Class 2 or greater class of impairment as converted to the whole
10 person, as determined by the sixth edition of the American medical association Guides to the Evaluation of
11 Permanent Impairment for the ratable condition, and has no actual wage loss as a result of the compensable
12 injury or occupational disease, the worker is eligible to receive payment for an impairment award only.

13 (3) The permanent partial disability award must be arrived at by multiplying the percentage arrived
14 at through the calculation provided in subsection (5) by 400 weeks.

15 (4) A permanent partial disability award granted an injured worker may not exceed a permanent
16 partial disability rating of 100%.

17 (5) The percentage to be used in subsection (4) must be determined by adding all of the following
18 applicable percentages to the whole person impairment rating:

19 (a) if the claimant is 40 years of age or younger at the time of injury, 0%; if the claimant is over 40
20 years of age at the time of injury, 1%;

21 (b) for a worker who has completed less than 12 years of education, 1%; for a worker who has
22 completed 12 years or more of education or who has received a high school equivalency diploma, 0%;

23 (c) if a worker has no actual wage loss as a result of the industrial injury, 0%; if a worker has an
24 actual wage loss of \$2 or less an hour as a result of the industrial injury, 10%; if a worker has an actual wage
25 loss of more than \$2 an hour as a result of the industrial injury, 20%. Wage loss benefits must be based on the
26 difference between the actual wages received at the time of injury and the wages that the worker earns or is
27 qualified to earn after the worker reaches maximum healing.

28 (d) if a worker, at the time of the injury, was performing heavy labor activity and after the injury the

1 worker can perform only light or sedentary labor activity, 5%; if a worker, at the time of injury, was performing
 2 heavy labor activity and after the injury the worker can perform only medium labor activity, 3%; if a worker was
 3 performing medium labor activity at the time of the injury and after the injury the worker can perform only light or
 4 sedentary labor activity, 2%.

5 (6) The weekly benefit rate for permanent partial disability is 66 2/3% of the wages received at the
 6 time of injury, ~~but the rate may not exceed one-half the state's average weekly wage.~~ The weekly benefit
 7 amount established for an injured worker may not be changed by a subsequent adjustment ~~in the state's~~
 8 ~~average weekly wage for future fiscal years.~~

9 (7) An undisputed impairment award may be paid biweekly or in a lump sum at the discretion of
 10 the worker. Lump sums paid for impairments are not subject to the requirements of 39-71-741, except that
 11 lump-sum payments for benefits not accrued may be reduced to present value at the rate established by the
 12 department pursuant to 39-71-741(5).

13 (8) If a worker suffers a subsequent compensable injury or injuries to the same part of the body,
 14 the award payable for the subsequent injury may not duplicate any amounts paid for the previous injury or
 15 injuries.

16 (9) If a worker is eligible for a rehabilitation plan, permanent partial disability benefits payable
 17 under this section must be calculated based on the wages that the worker earns or would be qualified to earn
 18 following the completion of the rehabilitation plan.

19 (10) As used in this section:

20 (a) "heavy labor activity" means the ability to lift over 50 pounds occasionally or up to 50 pounds
 21 frequently;

22 (b) "medium labor activity" means the ability to lift up to 50 pounds occasionally or up to 25 pounds
 23 frequently;

24 (c) "light labor activity" means the ability to lift up to 20 pounds occasionally or up to 10 pounds
 25 frequently; and

26 (d) "sedentary labor activity" means the ability to lift up to 10 pounds occasionally or up to 5
 27 pounds frequently."

28

